

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JERRY TRONNE BROWN,)	
)	
Petitioner,)	
)	Case No. 4:01 CV 451 RWS
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before me on Petitioner Jerry Brown's pro se motion to correct or modify the record pursuant to Federal Rule of Appellate Procedure 10(e) [#58].

On May 30, 2002 I denied Petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [#23]. In Petitioner's Section 2255 petition, he argued he was entitled to a new trial for several reasons. One argument was that Brown was entitled to a new trial because the Court did not notify him that the jury sent the Court a note and that the Court responded in writing. I fully analyzed this claim in my Memorandum and Order denying Petitioner relief under Section 2255. Brown appealed the denial of his 2255 petition to the Eighth Circuit Court of Appeals (No. 02-3027) and his appeal was denied on November 2002 [#36]. Brown next filed a petition for a writ of certiorari with the United States Supreme Court (No. 02-103440). Brown's petition was denied on June 6, 2003 [#41].

On November 12, 2004 Brown filed a motion to reconsider under Federal Rule of Civil Procedure 60(b) [#42] which I denied [#43]. Brown appealed this denial to the Eighth Circuit Court of Appeals (No. 04-4048) and his appeal was dismissed on May 10, 2005 [#52]. Brown also filed a petition for a writ of certiorari with the United States Supreme Court (No.05-6699)

which was denied on November 8, 2005 [#57].

On March 8, 2011 Brown filed a motion to correct or modify the record pursuant to Federal Rule of Appellate Procedure 10(e) [#58]. Brown argues that the jury note addressed in his Section 2255 motion was missing from the record and, as a result, “the appeals court cannot review this matter until the district court develop[s] the record by supplementing this matter.” This issue was addressed in the denial of his 2255 petition. Brown has appealed that denial to both the Eighth Circuit Court of Appeals and the United States Supreme Court. Brown has filed this motion years after his appeals were denied and he did not file a similar motion when his appeals were pending. Furthermore, Brown does not have an appeal currently pending before the Eighth Circuit Court of Appeals. Finally, the jury note at issue *is* a part of the record and is included in docket entry #139 in Brown’s underlying criminal case (4:98 CR 152 RWS). As a result, I will deny his motion to correct or modify the record.

Accordingly,

IT IS HEREBY ORDERED that Petitioner Jerry Tronne Brown’s motion to correct or modify the record pursuant to Federal Rule of Appellate Procedure 10(e) is **DENIED**.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 31st day of March, 2011.